Supremes Hold Court In Orange County

The California Supreme Court marked the 100th anniversary of the Orange County Bar Association and the Old Orange County Courthouse at a special ceremonial session in Santa Ana on October 4. (Front row, left to right) State Senator Joe Dunn (34th District); Superior Court of Orange County Presiding Judge C. Robert Jameson; Cynthia P. Coad, chair of the Orange County Board of Supervisors; and Danni Murphy, president of the Orange County Bar Association. (Back row, left to right) Justice Janice R. Brown; Justice Kathryn M. Werdegar; Justice Joyce L. Kennard; Chief Justice Ronald M. George; Justice Marvin R. Baxter; Justice Ming W. Chin; and pro tem Justice Mildred L. Lillie, Presiding Justice of the Court of Appeal, Second Appellate District. *Photo: Courtesy of the Superior Court of Orange County*

Drawing an audience of lawyers, law students, and other judges, the California Supreme Court conducted a special session of its oral argument calendar in Orange County. Held on October 4 at the Old Orange County Courthouse in Santa Ana, the session marked the centennial celebration of both the historic courthouse and the county's bar association. It was the first time the Supreme Court had held a formal session in Orange County.

Before the start of oral argument, a ceremony was held to commemorate the occasion. Participating in the ceremony were Presiding Judge C. Robert Jameson of the Superior Court of Orange County; State Senator Joe Dunn (34th District); Cynthia P. Coad, chair of the Orange County Board of Supervisors; and Danni Murphy, president of the Orange County Bar Association.

HISTORIC COURTHOUSE

Dedicated on November 12, 1901, the Old Orange County Courthouse is one of Southern California's oldest and most distinguished court buildings. With features such as a tile roof that in spots plunges at a 45-degree angle, the structure is one of the state's few surviving Romanesque Revival–style buildings.

The courthouse was among the first in the area to be wired for electricity. Since the use of electrical power in buildings was still in its infancy, power was available only for a limited time during the day. A large skylight over the rotunda supplemented the electric lighting. Chandeliers, wall sconces, and gas lamps were also utilized.

The building was designed to house the county clerk, recorder, treasurer, auditor, tax collector, assessor, board of supervisors, district attorney, school superintendent, sheriff, surveyor, board of education, and court reporter. It contained a single courtroom, one judge's chambers, a judge's library, a jury room, a law library, and a school library.

The original jury room housed a 12-member jury and included a coat closet and a restroom. In 1901 there was only a men's restroom for jurors, since women were not registered voters and therefore could not serve on juries. After the 19th Amendment was ratified in 1920, enfranchising women, a ladies' room was added.

In December 1968, the courts left the building for a home in a new courthouse a few blocks east, on Civic Center Drive. The old courthouse was designated as a California State Historic Landmark and was rededicated in 1987.

SUPREME COURT BROADCAST

On October 4, several hundred mock trial students from throughout Orange County gathered at several locations near the old courthouse to observe the Supreme Court's morning oral arguments via satellite television. The viewing was part of a program sponsored by the Constitutional Rights Foundation and the Superior Court of Orange County. Superior court judges joined the students at each satellite location to answer their questions about the proceedings.

Because seating was limited at the old courthouse, closed-circuit television coverage of the oral arguments was made available to the public directly across the street in the Board Hearing Room of the Hall of Administration. ■

Appellate Mediation

Continued from page 1

From July 1, 1999, through January 31, 2000, the First District hired program staff, recruited and trained mediators, and adopted program rules. The mediator training involved lectures, demonstrations, role play, and debriefing, with coaching by experienced neutrals. The program officially began operation in February 2000 with the first submissions of appeals to mediation.

HOW THE MEDIATION PROCESS WORKS

Shortly after the *Notice of Appeal* is filed, counsel receive a copy of local rule 3.5, an information sheet explaining the mediation process and its advantages, and a case screening form. The mediation program administrator then reviews the information entered on the case screening form in order to assess the appropriateness of the appeal for mediation. The form is designed to elicit specifics such as the basic facts of the case, anticipated appellate issues, a history of negotiations, related cases, and whether the case is one of first impression or involves the interpretation of a statute or regulation. For additional information, counsel are asked to attach a copy of any judgment, findings of fact, statement of decision, or order appealed from, in lieu of the trial court record.

Ordinarily, the program administrator then confers with counsel to determine whether the case should be submitted to mediation and to assess the motivation of the parties to mediate. If an appeal is submitted to mediation, the administrator assigns a neutral whose skill and experience are matched to the appeal. The assigned mediator serves pro bono for preparation time and the first four hours of session time. If a resolution is not achieved within four hours, the parties may agree to continue and compensate the mediator, at the market rate, for any additional time. The parties have the option of agreeing to an alternative mediator from the panel or to a private neutral, as long as that person agrees to follow court rules and procedures. Alternative and private mediators usually require full compensation.

PROGRAM SUCCEEDS

During the pilot period of the First Appellate District's program, 1,328 civil appeals were assessed and 288, or 22 percent, were submitted to the program for mediation. Counsel have estimated a cumulative savings in excess of $7.1 million for parties to appeals that were settled through mediation during the pilot period. (After the costs of unsuccessful mediations are offset, the estimated net savings for parties participating in the mediation program are more than $6.2 million.)

The task force's report attributes most of the program's success to the skills of the 146 mediators who were recruited and trained by the court and who serve on a largely pro bono basis. "Attorneys will consistently donate their time in the name of increasing court efficiency," adds Justice Ruvolo. "Attorneys, like everyone else involved in the legal process, want to see the system improve."

"There is a spectrum of dispute resolution programs in the state's other appellate districts, ranging from settlement conferences to mediation," says Mr. Toker. "The main difference between other programs and our own is that we have funding to train mediators, which helps to ensure that the parties will have a well-qualified neutral to help them settle their case."

● To view the report of the Task Force on Appellate Mediation, *Mandatory Mediation in the First Appellate District of the Court of Appeal: Report and Recommendations*, visit the California Courts Web site at www.courtinfo.ca.gov/reference/documents/mediation.pdf. For more information on the program, contact John Toker, mediation program administrator for the First Appellate District, 415-865-7373; e-mail: john.toker @jud.ca.gov. ■

Task Force Recommendations

In light of the success of the pilot program for mediation of civil appeals in the First Appellate District, the Task Force on Appellate Mediation has made five recommendations:

1. The mediation program in the First Appellate District should be extended indefinitely.
2. Participation in the mediation program should continue to be mandatory.
3. Court-sponsored training should remain an integral part of any appellate mediation program.
4. The program should retain its pro bono feature. However, the number of pro bono hours demanded from mediators should be limited. After the limit has been reached, mediators should receive reasonable compensation from the parties.
5. Other appellate districts should have the option of developing or expanding their own alternative dispute resolution programs—if necessary, with the financial assistance of the Administrative Office of the Courts.

Source: Mandatory Mediation in the First Appellate District of the Court of Appeal: Report and Recommendations

Q&A Stepping Up Court Security

Conversation With Presiding Judge Wayne L. Peterson

Presiding Judge Wayne L. Peterson, Superior Court of San Diego County

Many court leaders around the state ordered their courts closed on September 11 in response to security concerns arising from the unprecedented attacks on New York and the nation's capital. One of those leaders was Superior Court of San Diego County Presiding Judge Wayne L. Peterson.

Presiding Judge Peterson is in a unique position to assess not only the security challenges facing his own court but also those facing courts throughout the state. He serves on his court's executive committee, is the current chair of the Trial Court Presiding Judges Advisory Committee, is an advisory member of the Judicial Council, and was a member of the Task Force on Court Facilities, which just completed its final report on the status of courthouses around the state.

Recently Court News *spoke with Presiding Judge Peterson on the issue of court security.*

Is the need for tighter security a top priority in San Diego?

Security has long been an issue for the San Diego court, but it has taken on a whole new dimension since September 11. I recently met with the County of San Diego, the county sheriff, and the district attorney. We discussed issues surrounding the need for a different security plan.

Our court's executive committee just adopted a policy that puts in place new processes to ensure that we take the necessary steps to tighten security at all courthouses throughout the county, to the extent feasible.

The last six weeks have forced us to reassess our vulnerability and re-evaluate our security procedures. Before September 11, the mindset was that if a violent situation was going to occur, it was going to happen in the confines of or in the environment immediately surrounding a courtroom.

What are some of the considerations affecting your court's new security policies?

Any measure that involves so many different courthouse users requires a thorough dialogue in order to get total "buy-in" and to implement the level of security necessary in this day and age. For example, any new security measures we institute at the courthouse are going to affect prosecutors, public defenders, civil attorneys, the probation department, police agencies, vendors, moot court participants, and weekend and evening users, as well as court staff and the general public. We do not want to institute measures that limit the accessibility of court buildings without the support and cooperation of those who use these facilities.

Courts must decide what level of security they are going to implement. Security measures could range from posting guards at doors, where they can watch people coming into the courthouse, to putting magnetometers at all court facilities. We need to decide who, if anyone, will be exempt from going through those machines and whether to close off more vulnerable entry points, check photo identification or security cards of entrants, and install video surveillance cameras.

The goal should be to make improvements that are more than just cosmetic and that do more than give a false sense of security to court users. The changes I contemplate being made in San Diego are ones that are more than symbolic and are done for a specific purpose. We want to do the best job possible of protecting our visitors, given the facilities we have.

In your nearly 18 years on the bench, what changes have you seen in courthouse and courtroom security?

Until recently I have not seen a marked change in the level of security. When I joined the court, the majority of our facilities had a fairly standard level of security, consisting of bailiffs posted in each courtroom in addition to a constant police presence provided by numerous officers who came to testify in court proceedings.

The last six weeks have forced us to reassess our vulnerability and re-evaluate our security procedures. Before September 11, the mindset was that if a violent situation was going to occur, it was going to happen in the confines of or in the environment immediately surrounding a courtroom. Historically, that has been the type of violence or threats courts have experienced, rather than one of catastrophic proportions.

But now our security needs and the resources to satisfy those needs have changed. We are now much more concerned with peripheral security. For example, we have augmented our walking security by asking the sheriff to post officers on the streets surrounding the buildings. We have implemented new security measures at our underground parking garage, whereby only court and county employees with identification are allowed to enter the garage.

The Task Force on Court Facilities recently submitted its final report to the Governor and the Legislature on the condition of state court buildings. What did this report find concerning the state of security measures at court facilities?

I think there were two major factors that the task force examined to determine whether a court facility was rated as "functionally deficient." One factor was whether the building was structurally sound in terms of earthquakes, asbestos, and other hazards; the second was how the court addressed security issues. I believe the issue of security played an important role in almost every instance where we found a facility to be deficient.

Unfortunately, by the very nature of our business, courts are a breeding ground for violence. The task force found that a common potential for violence was created by the security risks associated with the care, custody, and control of prisoners between the holding cell and the courtroom. Major deficiencies in courts' security measures included walking prisoners through common hallways and inadequate holding facilities.

The task force never lost its focus on the importance of court security across the state. I would guess that there was probably not one county that avoided having one of its facilities downgraded due to security concerns.

What effect will the task force's report have on court facilities and on improving court safety procedures?

The task force has submitted its final report; it is now up to the Legislature to review the findings and decide whether to adopt, modify, or reject those recommendations. The task force recommended that the state take over the ownership of and responsibility for all state court facilities and do it over a three-year period. If the state proceeds with this takeover, the inventory of state buildings will essentially double.

This transition will be a monumental task. Funding for court facilities would be completely provided by the state. The personnel necessary to assume the responsibility for the operation, maintenance, and construction of court facilities would shift from the county to an entity run by the state. I would expect that entity to be a new arm of the Administrative Office of the Courts.

This transition in responsibility for court facilities may redirect our attention to security issues. It may also provide us with a more uniform approach, in terms of both design and financing, for the amount of security we now demand.

The timing of the task force's final report, including its emphasis on security concerns, and the events of September 11 are joined together. My hope is that the Legislature will recognize the severity of the need for increased courthouse security and will keep it at the forefront of its decision making in respect to these facilities.

How are other courts in California approaching court security?

The fall conference for presiding judges was held in San Jose at the end of September. It would be an overstatement to say that we were consumed by court security issues in light of September 11, but it would not be an overstatement to say that it was uppermost in everyone's mind.

Everyone was somber and thoughtful about court security due to recent events, but I don't remember a time when court security was not on the agenda for a meeting of presiding judges. What has changed is the reality that we have lost our innocence. We realize that we are now dealing with a security issue that has magnified a hundred times in severity and potential tragedy if we don't deal with it at the local level.

At the risk of denigrating the issue by talking about monetary factors, increased security measures cannot be accomplished without adequate funding. Adding courthouse security is extraordinarily expensive. Many courts across the state have lamented the fact that more of their budget increases were going toward security, and that was before September 11. Other presiding judges I've spoken with have admitted that their security budgets were already draining their assets and that the added security that we now see as necessary will increase this pressure. We would like to rise to a level of security that we think is appropriate in light of recent events, but fiscal realties make that extremely difficult.

Obviously, it is a troublesome time for courts in terms of security issues. We must figure out what to do, how to do it, and how to pay for it. ■

Prop. 36 and Prior Convictions

Proposition 36 excludes from its provisions those persons who: (1) have two separate convictions for nonviolent drug offenses, (2) have already participated in two separate courses of drug treatment, and (3) have been found by the court to be "unamenable to any and all forms of available drug treatment." (Pen. Code, § 1210.1(b)(5).)

"TWO SEPARATE CONVICTIONS"

A defendant having two separate convictions for nonviolent drug possession, along with the other factors discussed here, will be excluded from the benefits of Proposition 36. It is not clear from the legislation whether the convictions must be from two separate proceedings or may be incurred in the same proceeding with multiple counts. The use of the term *separate*, however, strongly suggests that the prior convictions must arise out of two distinct criminal actions.

CONVICTIONS AND TREATMENT PRIOR TO JULY 1, 2001

Drug convictions and treatment that occurred prior to July 1, 2001, probably may not be used to disqualify a defendant from the benefits of the new law. First, the treatment programs contemplated by Proposition 36 did not exist prior to the effective date of the legislation. Second, Proposition 36 provides that its terms are to be effective July 1, 2001, and shall be applied prospectively only. To extend the disqualifying factors backward prior to July 1 would appear to run contrary to the intent of the initiative.

"UNAMENABLE TO DRUG TREATMENT"

To exclude a defendant based on prior drug convictions, the court must find by clear and convincing evidence that the person is "unamenable to any and all forms of available drug treatment." Proposition 36 refers to amenability to drug treatment in three different contexts. The first is when a defendant is excluded from the benefits of Penal Code section 1210.1(a) because of prior convictions and drug treatment (§ 1210.1(b)(3)). Second, the probation officer may ask the court to revoke probation if the treatment provider notifies the probation department that the defendant is "unamenable to the drug treatment provided and all other forms of drug treatment" (§ 1210.1(c)(2)). Third, after the second violation of a drug-related condition of probation, the court must revoke probation if it is determined by a preponderance of the evidence that the defendant either is a danger to others or is unamenable to drug treatment (§ 1210.1(e)(3)(B)).

The only instance where the statute defines "unamenability to drug treatment" is in the last context: the court may consider, "to the extent relevant," whether the defendant has committed a serious violation of the program rules, whether there have been repeated violations of the rules that have affected the defendant's ability to function in the program, and whether the defendant has refused treatment or has asked to be removed from the program. There is no reason to suggest that the list in section 1210.1(e)(3)(B) is exhaustive or that these or other factors cannot be considered in any of the three circumstances where the court is required to assess the defendant's amenability to treatment.

CRIME and PUNISHMENT

PUNISHMENT OF PERSONS UNDER SECTION 1210.1(b)(5)

Penal Code section 1210.1(b)(5) specifies the punishment of persons excluded from Proposition 36 treatment by the provisions of the subsection: "Notwithstanding any other provision of law, the trial court shall sentence such defendants to 30 days in jail." Presumably the provision will apply to both felony and misdemeanor convictions, and in situations where a state prison sentence normally would be imposed.

It is important to emphasize that the 30-day sentence provision is applicable only to persons who are excluded from Proposition 36 under the unamenability provisions of section 1210.1(b)(5); it does not apply to any of the other four circumstances of exclusion. A defendant who refuses treatment, for example, in order to be labeled "unamenable to treatment" will be excluded under section 1210.1(b)(4). Under such circumstances, traditional sanctions may be imposed.

It has been argued that the 30 days specified by the statute merely are a statutory minimum. Several reasons are given in support of this argument: (1) the statute does not say "only" 30 days or "not more than" 30 days; (2) to limit the sentence to 30 days would produce anomalous results because persons who do qualify for treatment may later receive more punishment than those who are excluded; and (3) the 30-day sentence may convert a felony to a misdemeanor under section 17(b), a result not intended by the enactors. Notwithstanding the compelling nature of these arguments, courts must use caution in applying the law in a manner that would appear to contravene the clear intent of the proposition to limit sentences in these situations to 30 days in jail.

In any event, because of the sentencing consequences of exclusion from Proposition 36, arguments of counsel over the issue of amenability should present an interesting exercise in role reversal. Determined prosecutors may argue, "This person can be saved," while astute defense attorneys may denounce the defendant as "irretrievably lost." Because of long-entrenched habits, it may be difficult for many attorneys to form the words necessary to make the argument. It could be fun to watch. ■

Judge J. Richard Couzens

Judge Couzens is a former member of the Judicial Council and past chair of its Criminal Law Advisory Committee.

Courts Welcome New Fellows

In October, 10 new judicial fellows began assignments that promise to help them learn about and improve the administration of justice in California.

The Judicial Council of California and the Center for California Studies of California State University at Sacramento (CSUS) created the Judicial Administration Fellowship Program to develop professionals and leaders by educating them in the growing complexities of the court system. Fellows are assigned a variety of duties, depending on their office placement, interests, and skills. Each fellowship position combines a full-time professional field assignment in an office of the courts with graduate work in public policy administration at CSUS.

"My time at the Office of Governmental Affairs has been a phenomenal learning opportunity," says Alex Ponce de Leon, referring to his fellowship in Sacramento during the 2000–2001 academic year. "The Office of Governmental Affairs was the ideal place for me to learn the intricate and complex processes of state politics. For the past year I have worked closely with the office's legislative advocates on a wide variety of court-related proposals."

This year's participants in the Judicial Administration Fellowship Program will work from October 2001 through August 2002. Fellows are assigned as professional staff with the Supreme Court, the superior and appellate courts, and the Administrative Office of the Courts. Following is a brief introduction to the 2001–2002 Judicial Administration Fellows.

Liliana Campos is a recent graduate of the University of California at Berkeley and previously worked for the American Bar Association. Placement: Superior Court of Los Angeles County, Planning and Research Unit.

Sandra Jimenez graduated with a degree in history and international relations from Georgetown University. She previously worked for the U.S. Department of Justice in Washington, D.C. Placement: Superior Court of Yolo County.

Beau Kilmer earned a Bachelor of Arts from Michigan State University and a master's degree in public policy from the University of California at Berkeley. For the past four years he has worked as a consultant with the RAND Institute's Drug Policy and Research Center. Recently he was a visiting scientist at the Netherlands Institute for Mental Health and Addiction. Placement: Superior Court of San Francisco County.

Allison Knowles graduated from California State University at Chico with a degree in political science. She is the former director of the Chico Women's Law Project at the Community Legal Information Center. Placement: Administrative Office of the Courts, Center for Families, Children & the Courts.

Derrick L. Sanders is a graduate of Lincoln University in southeastern Pennsylvania. He has served as a staff member for the mayor of Carson, California, and most recently worked with the Enterprise Rent-a-Car Corporation. Placement: Court of Appeal, Second Appellate District, Office of the Clerk/Administrator.

Laura Shigemitsu graduated from California Lutheran University. She has worked for the Parole and Community Service Division of Van Nuys/North Hollywood. Placement: Superior Court of Los Angeles County, Organizational Development and Education Department.

Stephen Underhill is a graduate of California State University at Sonoma (CSS). As an undergraduate, he served as the editor of the CSS newspaper. Placement: Superior Court of Ventura County.

Alla Vorobets graduated from the University of California at Santa Barbara with a degree in law and society. Placement: Judicial Council, Office of Governmental Affairs.

Nancy Vue is a recent graduate of the University of California at Davis, where she majored in community and regional development. Placement: Superior Court of Alameda County, Planning and Research Bureau.

Marc Wolf graduated with high distinction from the University of California at Berkeley with a Bachelor of Arts in history. Placement: California Supreme Court, Office of the Clerk.

● For more information on the Judicial Administration Fellowship Program, contact June Clark, 916-323-3121; e-mail: june.clark@jud.ca.gov.